IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF IOWA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	CRIMINAL NO. 03-158
vs.)	
)	
CHARLES THOMAS ANDREANO, III,)	
)	ORDER
Defendant.)	

The Court has before it defendant Charles Thomas Andreano's motion to dismiss and motion to suppress, both filed March 8, 2004. The government resisted both motions on March 29, 2004. Defendant filed a reply in support of the motion to suppress on April 5, 2004, and a reply in support of the motion to dismiss on April 6, 2004. The Court held an evidentiary hearing on defendant's motion to suppress on April 21, 2004. The matter is now considered fully submitted.

I. BACKGROUND

The Court finds the following facts to be true based on testimony and evidence received during the hearing. On April 25, 2003, officers with the Des Moines Police Department narcotics unit received information that Mr. Andreano was staying at the Motel 6, Room 128, on Fleur Drive in Des Moines, Iowa, and was in possession of drugs and guns. Three officers set up surveillance of room 128 at approximately 10:30 a.m. Sometime before 11 a.m. the officers observed two males and one female exit the room. One of the males and the female left the area in a vehicle and were followed by one of the officers. The two remaining officers, Chris Mahlstadt and Kelly Fisher of the Des Moines

Police Department, observed the remaining male, later identified as Mr. Andreano, walk across the parking lot to a purple Pontiac Sunfire. Mr. Andreano moved the car to a parking space directly in front of the hotel room. Mr. Andreano exited the car and re-entered room 128. The officers moved to the door of the room and knocked. Mr. Andreano admitted the officers into the room and both he and a female companion gave their consent to search the room.

The search of the room produced a small amount of marijuana, methamphetamine, drug paraphernalia including needles, and a shotgun shell. Upon finding the needles, the officers asked Mr. Andreano if he had any other needles and he stated that he had one in his pocket. Mr. Andreano was then handcuffed and Officer Mahlstadt recovered a needle from his pocket. Mr. Andreano's female companion was found to have a felony arrest warrant so she was arrested and handcuffed.

The officers then inquired about the Pontiac Sunfire parked in front of the hotel room. Mr. Andreano admitted to driving the vehicle, but claimed that he did not own it and that some of the contents of the car were not his. The officers stated that they would be impounding the vehicle pursuant to an unwritten agreement with area motels that the Des Moines Police Department remove vehicles of people who are arrested from a motel. While in the parking lot of the motel, Officer Fisher began to inventory the car's contents. While she was conducting the inventory search, Officer Mahlstadt asked Mr. Andreano whether there was anything in the car that could pose a danger to the officers. Mr. Andreano, who had not yet been advised of his Miranda rights, responded that there was a shotgun in the car. The search of the car by Officer Fisher revealed a sawed-off shotgun and a

¹ The record indicates that the car's license plates were registered to Mr. Andreano and another woman, but were listed for a Oldsmobile Cutlas; not a Pontiac Sunfire.

loaded .45 caliber handgun. After the firearms were discovered, Officer Mahlstadt told Mr. Andreano that he was formally under arrest and advised him of his Miranda rights.

After his arrest on April 25, 2004, Mr. Andreano was held in Polk County Jail on state drug charges. On June 10, 2003, a federal indictment was returned in this Court charging Mr. Andreano with one count of Felon in Possession in violation of 18 U.S.C. § 922(g)(1), and one count of Possession of Unregistered Firearm in violation of 26 U.S.C. § 5861(d). On or about June 16, 2003, while still in the Polk County Jail, Mr. Andreano was served a copy of his federal indictment and a copy of his arrest warrant. Mr. Andreano's federal arrest warrant provided "Bail fixed at \$ Detain." Federal Marshals did not file a detainer against Mr. Andreano, nor did they serve him with any document explaining the right to a speedy trial. On October 20, 2003, Mr. Andreano was sentenced by a state court to prison. On October 24, 2003, Federal Marshals filed a detainer against Mr. Andreano with the Oakdale Correctional Facility, where Mr. Andreano was serving a term of imprisonment for his state drug charges. At that time, Mr. Andreano refused to sign a form notifying him of his right to a speedy trial.

Mr. Andreano now moves to dismiss his indictment on the grounds that the government failed to promptly provide him with notice of this right to a speedy trial while he was serving his state sentence. Mr. Andreano also moves to suppress evidence of the firearms on the grounds that the officers obtained evidence in violation of his Fourth and Fifth Amendment rights.

II. MOTION TO DISMISS

Mr. Andreano moves to dismiss his indictment on the grounds that the government violated his due process rights because it failed to promptly advise him of his right to a speedy trial. Mr. Andreano is correct that 18 U.S.C. § 3161(j)(1)(B) creates a duty upon the government to inform him of his right to a speedy trial. That section reads, in relevant part:

If the attorney for the Government knows that a person charged with an offense is serving a term of imprisonment in any penal institution, he shall promptly ... cause a detainer to be filed with the person having custody of the prisoner and request him to so advise the prisoner and to advise the prisoner of his right to demand a trial.

18 U.S.C. § 3161(j)(1)(B).

In this instance, even assuming the government failed to comply with the requirements of this provision, Mr. Andreano's motion to dismiss will be denied. The Eighth Circuit has clearly ruled that the dismissal of an indictment against a defendant is not an appropriate remedy for violations of § 3161(j)(1). *United State v. Walker*, 255 F.3d 540, 542 (8th Cir. 2001) ("[O]ther courts have concluded that dismissal of an indictment is not an appropriate remedy for violations of § 3161(j)(1) We agree."). Mr. Andreano's assertion that the Eighth Circuit has not completely rejected dismissal as a remedy under § 3161(j)(1) is misguided. The Eighth Circuit's statement in *Walker* that it would "leave for another day the question of whether and under what circumstances [dismissal] may be justified" appears to apply to alleged violations of the Interstate Agreement on Detainers Act; not § 3161(j)(1). In this case, the Interstate Agreement on Detainers Act is not applicable and Mr. Andreano based his motion solely on § 3161(j)(1). The remedy requested by Mr. Andreano is not available in the Eighth Circuit. Consequently, Mr. Andreano's motion to dismiss is denied.

III. MOTION TO SUPPRESS

Mr. Andreano also contends that: (A) the warrantless search of the car violated his Fourth

Amendment rights; and (B) the officers' questioning that elicited his statement about the presence of the shotgun violated his Miranda rights. Mr. Andreano moves to suppress evidence of the shotgun and handgun seized from the Pontiac Sunfire, as well as his incriminating statement about the location of the gun.

A. Whether the Warrantless Search of the Car Violated the Fourth Amendment

The government submits that the evidence should not be suppressed for the following three reasons: (1) the car was searched pursuant to a valid inventory search; (2) the search was supported by probable cause that the car contained evidence of a crime; and (3) the search was permissible as incident to Mr. Andreano's arrest. These arguments are addressed below.

1. Inventory Search

The United States Supreme Court has held that when seizing or impounding a vehicle, police may perform a warrantless search and inventory of the vehicle in order to safeguard the owner's property, protect the department from claims of lost or stolen items, and ensure officers are not at risk from dangerous items left in the property. *Colorado v. Bertine*, 479 U.S. 367, 372 (1987). The inventory search must be conducted in accordance with established police procedures and must not be used "in an after-the-fact attempt to justify what was . . . in fact purely and simply a search for incriminating evidence." *United States v. Marshall*, 986 F.2d 1171 (8th Cir. 1993). Established police procedures are not required to be written polices; unwritten established procedures are also sufficient. *United States v. Lowe*, 9 F.3d 43, 45-46 (8th Cir.1993), *cert. denied*, 510 U.S. 1181

(1994). The court must look to the totality of the circumstances in determining whether an inventory search was reasonable. *See, e.g., United States v. Rankin*, 261 F.3d 735, 739 (8th Cir. 2001) (citing *Marshall*, 986 F.2d at 1174).

Mr. Andreano first argues that there was no need for an inventory search. Officer Mahlstadt explained, however, that if the police do not deal with vehicles at the time of the arrest, they will generally be forced to come back at a later date to handle what would become an abandoned vehicle. Both Officers Mahlstadt and Fisher testified that because of this problem the Des Moines Police Department has a longstanding unwritten agreement with Des Moines area motels that if the police arrest someone from the motel, the police will remove the person's vehicle. In this case, both Mr. Andreano and his female companion were under arrest and no one else was present to take custody of the Pontiac Sunfire. Under these circumstances, the Court finds the officers' decision to impound the Pontiac Sunfire reasonable.

Mr. Andreano also claims that Officer Fisher's inventory search of the car was premature because the search began before Mr. Andreano was formally arrested. However, "the determination of whether an arrest has occurred for Fourth Amendment purposes does not depend upon whether the officers announced that they were placing the suspects under arrest. An action tantamount to arrest has taken place if the officers' conduct is more intrusive than necessary for an investigative stop." *United States v. Rose*, 731 F.2d 1337, 1342 (8th Cir. 1984). In the present case, both Mr. Andreano and his female companion were in handcuffs prior to the inventory search. The officers had also previously discovered drugs and drug paraphernalia in the motel room. Under these circumstances, the Court finds that Mr. Andreano and his female companion were under arrest when Officer Fisher began the

inventory search, even though officers had not formally announced the arrest.

For the aforementioned reasons, the Court finds Officer Fisher's inventory search valid under the Fourth Amendment. Because the officers uncovered the firearms in the course of a valid inventory search, the Court need not determine whether the guns were discoverable under the other two alternatives set forth by the government. Consequently, Mr. Andreano's motion to suppress with respect to this issue is denied.

B. Whether the Officers Elicited an Inadmissible Statement From Defendant About the Location of the Firearm

Mr. Andreano contends that the Court should suppress the statement he made regarding the shotgun being in the car because he had not received Miranda warnings prior to making the statement.

The Supreme Court set forth the public safety exception to Miranda in *New York v. Quarles*, 467 U.S. 649 (1984). Under that exception, a suspect's answers to questions from a police officer are admissible in the absence of a Miranda warning so long as the questions asked of the suspect are reasonably prompted by a concern for the public safety. *United States v. Lawrence*, 952 F.2d 1034, 1036 (8th Cir.1992),

The Eighth Circuit applied the *Quarles* exception in *United States v. Williams*, 181 F.3d 945 (8th Cir.1999). In *Williams*, the defendant was arrested at his apartment on narcotics charges. After securing the premises, the officers handcuffed defendant and before they advised him of his Miranda rights, the officers asked him, "[i]s there anything we need to be aware of?" The defendant told them that there was a gun in a closet. *Id.* at 947. The Eighth Circuit determined that the statement was admissible, even though the apartment had been secured and the only information suggesting the

presence of weapons was an assumption about the relationship between narcotics and guns, and the fact that defendant had at one time been charged with unauthorized use of a weapon. *Id.* at 948-49. Despite these facts, the court ruled that *Quarles* permitted the officers to question the defendant because they "could not have known if any armed individuals were present in the apartment or preparing to enter the apartment within a short period of time . . . [or] whether other hazardous weapons were present in the apartment that could cause them harm if they happened upon them unexpectedly or mishandled them in some way." *Id.* at 953-54.

In the present case, after the officers decided to impound the vehicle Officer Mahlstadt asked Mr. Andreano if there was anything in the car that could harm Officer Fisher while she was conducting the inventory search. Officer Fisher indicated that the car was packed full of duffle bags and miscellaneous items and she had to sort through all of the items to take inventory. Officer Mahlstadt testified that he had already discovered needles in the motel room and a needle in Mr. Andreano's pocket and he was concerned about Officer Fisher coming across additional needles while she was searching the car. Considering the circumstances surrounding the inquiries, the Court finds that Officer Mahlstadt's pre-Miranda questioning of Mr. Andreano was done for the purpose of ensuring Officer Fisher's saftey, and not in an attempt to elicit an incriminating response. Officer Mahlstadt's questioning of Mr. Andreano is admissible under the officer safety exception and Mr. Andreano's motion to suppress with regard to this matter is denied.

IV. CONCLUSION

For the foregoing reasons, defendant's motions to dismiss is DENIED. Defendant's motion to suppress is DENIED.

IT IS SO ORDERED.

Dated this 27th day of April, 2004.

ROMALDE TONGSTAFF,

United States District Court